

भारत का राजपत्र The Gazette of India

असाधारण

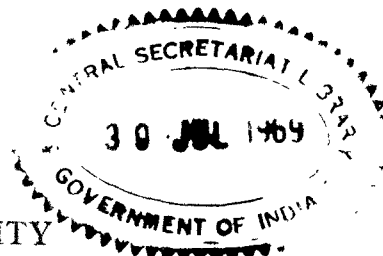
EXTRAORDINARY

भाग 2—खंड 2

PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 17th May, 1969:—

BILL No. XVI OF 1969

A Bill further to amend the Wakf Act, 1954.

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

1. This Act may be called the Wakf (Amendment) Act, 1969.

Short title.

29 of 1954.

13 of 1936.

17 of 1955.

2. In section 2 of the Wakf Act, 1954 (hereinafter referred to as the principal Act), in the proviso, for the words, figures and brackets “the Durgah Khawaja Saheb Act, 1936 and the Durgah Khawaja Saheb (Emergency Provisions) Act, 1950, apply”, the words and figures “the Durgah Khawaja Saheb Act, 1955, applies” shall be substituted.

Amendment of section 2.

3. In section 3 of the principal Act, for clause (g), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

Amendment of section 3.

“(g) “net annual income”, in relation to a wakf, means the gross income thereof from all sources in a year excluding only—

(i) land revenue, cess, rates and taxes payable to the Government or any local authority; and

(ii) donations given or offerings made with a specific direction that they shall form part of the corpus of the wakf:

Provided that the interest or income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;’.

Amend-
ment
of sec-
tion 4.

4. In section 4 of the principal Act, in sub-section (3),—

(a) after the words “submit his report”, the words “, in respect of wakfs existing at the date of the commencement of this Act in the State or any part thereof,” shall be, and shall be deemed always to have been, inserted; and

(b) in clause (a), for the words “in the State”, the words “in the State, or as the case may be, any part thereof” shall be, and shall be deemed always to have been, substituted.

Amend-
ment
of sec-
tion 5.

5. In section 5 of the principal Act, in sub-section (2), for the words “existing in the State”, the words “existing in the State, or as the case may be, the part of the State to which the report relates, and” shall be, and shall be deemed always to have been, substituted.

Amend-
ment
of sec-
tion 6.

6. In section 6 of the principal Act, in sub-section (1),—

(a) for the words “whether a particular property is wakf property or not or whether a wakf is a Shia wakf or Sunni wakf”, the words “whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf” shall be, and shall be deemed always to have been, substituted; and

(b) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969, such suit may be entertained by the civil court within the period of one year from such commencement.”.

Amend-
ment
of sec-
tion 7.

7. In section 7 of the principal Act, in sub-section (1),—

(a) for the words “publication of the list of wakfs”, the words “publication of the list or lists of wakfs” shall be substituted; and

(b) for the words “by all the mutawallis in proportion to the income of the property of the wakfs situated in the State”, the words “by all the mutawallis of the wakfs the net annual income whereof exceeds one hundred rupees, in proportion to the net annual income accruing in the State to such wakfs” shall be substituted.

Amend-
ment
of section
8B.

8. In section 8B of the principal Act, in sub-section (1), the words “of the properties” and the words “of the property” shall be omitted.

Amend-
ment

9. In section 46 of the principal Act, in sub-section (1), for the words “net annual income of such of its property as is situate in the State”.

10. Notwithstanding anything contained in any judgment, decree or order of any court to the contrary, and subject to the provisions of the second proviso to sub-section (1) of section 6 of the principal Act as amended by this Act, every list of wakfs purporting to be a list of wakfs existing at the date of the commencement of the principal Act in any part of a State and published or purporting to have been published under sub-section (2) of section 5, before the commencement of the Wakf (Amendment) Act, 1969, shall be deemed to be, and shall be deemed always to have been, published in accordance with law.

Special provisions as to certain lists of wakfs published under sub-section (2) of section 5.

11. Notwithstanding anything contained in any law or any judgment, decree or order of any court, all contributions paid or realised, or purporting to have been paid or realised, under section 46 of the principal Act, which would have been validly paid or realised if the amendments made to the principal Act by this Act were in force on the date of such payment or realisation, shall, for all purposes, be deemed to be, and shall be deemed always to have been, paid or realised in accordance with law, and accordingly—

Validation of contributions paid or realised under section 46.

(a) no suit or other legal proceeding shall be maintained or continued in any court for the refund of the whole or any part of the contribution so paid or realised; and

(b) no court shall enforce any decree or order directing the refund of the whole or any part of the contribution so paid or realised.

STATEMENT OF OBJECTS AND REASONS

Chapter II of the Wakf Act, 1954, provides for the survey of wakf properties existing in a State at the date of the commencement of the Act. The survey of all wakfs existing in a State takes quite a long time with the result that the finalisation of the list of all wakfs in a State takes several years. The whole object of the said Chapter is to provide for an authoritative list of wakfs in a State and to provide for speedy and final disposal of all disputes relating to the character of such wakfs or to the property of such wakfs. On the assumption that the Act permits the publication of different lists of wakfs in respect of different parts of a State, two or more lists of wakfs have been published in some States and Union territories. On a strict reading of the provisions of Chapter II of the Wakf Act, 1954, it would however appear that the provisions of the Chapter do not permit the publication of more than one list of wakfs in respect of a State. This would mean that where two or more lists are published in a State, such lists are invalid in law. Unless, therefore, such lists are validated, the entire survey work accomplished in the State concerned may become infructuous. It is, therefore, proposed to amend the Act to permit the publication of different lists of wakfs in respect of different parts of a State and to validate all previous cases of publication of different lists of wakfs in respect of different parts of a State. At the same time, in order to ensure that such validation does not prejudicially affect any person, it is proposed to confer on the persons concerned a right to institute within a period of one year from the date of commencement of the proposed legislation, suits for modification of the lists so validated.

2. It is proposed to avail of the present opportunity to give effect to certain amendments which were sought to be made in the Act by the Wakf (Amendment) Bill, 1965, which was passed by the Rajya Sabha in 1966, but which lapsed on the dissolution of the Third Lok Sabha. These are explained below:—

(i) Under the Wakf Act, 1954, the contribution payable by mutawallis and others to the State Board of Wakfs has to be calculated with reference to the net annual income of the wakfs. Section 3(g) of the Act provides that net income means "the total income less any revenue, cess, rates and taxes payable to the Government or any local authority". The intention has always been that in computing net annual income, no deductions other than those expressly provided for in the definition of net income should be permitted. But a contrary view was taken by the Kerala High Court. Further doubts have been expressed as to whether donations and offerings made to a wakf form part of its income. It has thus become necessary to make the position clear and to validate the contributions already realised. Accordingly, it is proposed to substitute a new definition of "net annual income" for the definition of "net income" contained in the said section 3(g).

(ii) Wakfs whose annual income does not exceed Rs. 100 are, under section 46 of the Act, exempt from the liability to pay any contribution to the State Board of Wakfs. It is proposed to amend section 7 of the Act suitably to exempt such wakfs from the liability to share the cost of survey of wakfs, also.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 29th April, 1969.

F. A. AHMED

B. N. BANERJEE,
Secretary.

